Filed 7/5/19 A.R. v. Superior Court CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

A.R., Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Real Party in Interest.	E072427 (Super.Ct.No. J275794) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Steven A. Mapes, Judge. Petition denied.

Valerie Ross for Petitioner

No appearance for Respondent.

Michelle D. Blakemore, County Counsel, Michael A. Markel, Deputy County Counsel for Real Party in Interest.

Petitioner A.R. (Mother) has filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452. Mother claims that the juvenile court erred in terminating reunification services and in setting a hearing under Welfare and Institutions Code[1] section 366.26 because Mother was not afforded or offered reasonable services. For the reasons set forth below, we deny Mother's writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

A.S. (Minor) came to the attention of San Bernardino County Children and Family Services (CFS) when CFS received a general neglect referral. Mother had given birth to Minor prematurely at 27 weeks; Minor weighed two pounds. Both Mother and Minor tested positive for methamphetamine. Mother admitted to having a substance abuse problem and using marijuana and cigarettes during her pregnancy. Mother also admitted using methamphetamine approximately three days prior to giving birth.

The social worker responded to the referral on April 4, 2018; she observed Minor in an incubator in the Neonatal Intensive Care Unit at Loma Linda Children's Hospital. Hospital staff told the social worker that Mother had been by Minor's side almost every day. Mother, however, appeared to be developmentally delayed; she did not know what to do, and when she was spoken to, she appeared not to understand.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

On the same day, the social worker made telephone contact with the maternal grandmother (MGM). MGM stated that Mother did not have a phone and MGM was in contact with Mother through Facebook. MGM indicated that she would have Mother contact the social worker. Later that day, Mother contacted the social worker and arranged an appointment.

On April 6, 2018, the social worker and Mother met at the CFS office. Mother informed the social worker that Minor was her first child. Mother did not receive prenatal care other than over-the-counter prenatal vitamins and while Mother was in jail on burglary charges. According to Mother, she lived in Apple Valley. Currently, she was housesitting a home in Rialto. MGM lived in Hesperia. Mother agreed to drug test but failed to do so because of a family emergency and her car broke down.

On April 17, the social worker spoke to the hospital social worker. MGM told the hospital social worker that Mother was incarcerated at Glen Helen Rehabilitation Center. The next day, the social worker attempted to make contact with Mother but was advised that Mother was not available as she was being transported for a medical appointment.

On April 20, 2018, CFS filed a petition on behalf of Minor; and the juvenile court held a detention hearing three days later. Minor remained at the hospital. The court set the jurisdiction/disposition hearing for May 14, 2018.

The jurisdiction report filed on May 10, 2018, provided that the primary allegations against Mother were her history of substance abuse and criminal lifestyle, which placed Minor at risk. Moreover, Mother failed to protect Minor because she failed to receive prenatal care and her drug addiction impaired her ability to parent. The social

worker indicated that Mother had been difficult to contact for further assessment. Mother did not have a stable residence and moved around between Rialto, Hesperia and Apple Valley. In the additional information report filed on the same day, the social worker provided the court with police reports involving Mother. The social worker reported that she had attempted to make contact with MGM by telephone and left two messages for Mother to contact the social worker and/or for the MGM to contact the social worker with Mother's location. The social worker received no reply to her messages as of May 10, 2018. The social worker also noted that according to the police reports, MGM conspired with Mother in her criminal activity.

At the hearing on May 14, 2018, Mother was present and submitted a waiver of rights. The court found that Mother provided "free, knowing, voluntary, and intelligent waivers in open court with the assistance of Counsel." However, due to the procedural issues involving the possible fathers, the court did not sustain the b-1, b-2, and b-3 allegations until August 8, 2018, at a further jurisdiction/disposition hearing.

On August 6, 2018, a second additional information report was filed. The social worker reported that Mother tested clean on June 19 and 26. The social worker also reported that Mother had engaged in drug treatment services and had presented the social worker with a letter of enrollment dated May 10, 2018. On July 12, however, the social worker learned that Mother was no longer enrolled in the program as of May 23, 2018. Mother failed to show up for her meetings on May 9 and May 14. The program placed Mother on a 30-day contract for testing positive for methamphetamine on May 16. Mother failed to show up for drug treatment on May 21, and thereafter.

At the hearing on August 8, 2018, Mother was present. The court ordered reunification services for Mother and approved her reunification plan, which included substance abuse treatment, random drug testing, individual counseling, parenting education, life skills training. The court also ordered Mother to secure stable and suitable housing. At the hearing, Mother submitted a progress report from a counseling center that indicated Mother had completed eight out of eight individual counseling sessions; eight out of 12 parenting education sessions; and eight out of 12 life skills education sessions. The court set the section 366.21(e) hearing for February 7, 2019.

According to the six-month status review report dated February 7, 2019, the prognosis for Mother was poor. Mother had made minimal progress despite completing a parenting program, individual therapy and a domestic violence program, because her main issue of substance abuse remain unaddressed. Mother had entered drug treatment programs three times. Each time, Mother failed to complete the drug treatment program.

Regarding drug testing, Mother had negative tests on the following dates: May 22, June 19, June 26, August 10, September 7, and September 12, 2018. Mother, however, failed to drug test on the following dates: April 6, May 16 (Mother drug tested at her program on this date and tested positive for methamphetamine), June 4, July 16, July 31, August 17, October 26, October 29, November 1, and November 5, 2018. Mother, therefore, failed to test on 10 occasions. The social worker was unable to provide assistance because Mother stopped contacting the social worker in November 2018.

Regarding visitation, Mother failed to take advantage of her visitation opportunities. Mother had arrived late to several visits, would visit for short periods of time, and leave early. During one visit, Mother went to the restroom; when she returned, she appeared to be under the influence. On another visit, when the social worker did not see Mother, the social worker asked MGM about Mother's whereabouts. MGM reported that Mother was in the restroom. The social worker remained at the visit site for an hour but Mother never came out of the restroom. MGM then admitted that Mother did not come to the visit. In November Mother stopped contacting the social worker. Therefore, the social worker was unable to provide any assistance with visitation that Mother may have needed.

Mother failed to attend the six-month review hearing on February 7, 2019. Mother's counsel offered no evidence but objected to the termination of Mother's services and to the setting of the section 366.26 hearing. Moreover, Mother's counsel did not argue about the reasonableness of the services provided to Mother. Counsel stated: "It does appear Mom has struggled with sobriety; however, she has definitely made efforts and attempted to complete the majority of her case plan. She does still need some help. . . . [¶] . . . I believe that this mother is showing some significant effort. She has drug-tested. She has missed some tests, but she is doing the things the Court has asked her to do, although she has not completed them all successfully."

At the conclusion of the hearing, the juvenile court adopted the findings and orders set forth in the section 366.21(e) report, including that the services provided to Mother were reasonable, that Mother failed to participate regularly and make substantive

progress in her court-ordered case plan, that Minor was under the age of three on the date of the initial removal, and that there was not a substantial probability of return within the statutory time frame. The court set the section 366.26 hearing for June 6, 2019.

On April 2, 2019, Mother filed an untimely notice of intent to file a writ petition. On April 18, 2019, we granted Mother relief from default for failure to file a timely notice of intent to file a writ petition.

On May 30, 2019, we stayed the section 366.26 hearing scheduled for June 6, 2019, pending resolution of this writ petition.

DISCUSSION

First, we find Mother forfeited her challenge to the adequacy of services because Mother never argued that CFS failed to provide her with reasonable services. In fact, as provided above, at the review hearing, Mother's counsel argued that Mother had essentially complied with her service plan, and that she may be able to complete her plan if given another six months of reunification. Counsel, therefore, asked "the Court to continue services for Mother." There was no argument made that the reunification services were unreasonable. By failing to object to the adequacy of reunification services in the juvenile court, Mother has forfeited her right to assert error in this court. (See *Los Angeles Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093 [a parent may not "wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing"]; *In re Kevin S.* (1996) 41

Cal.App.4th 882, 885 [forfeiture rule applies in dependency cases]; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339 [same].)

Second, even if we were to reach the merits, we reject Mother's claim that she was provided with unreasonable reunification services. Our review is limited to whether the appellate record discloses substantial evidence to support the juvenile court's finding that the agency made reasonable efforts to facilitate reunification, recognizing that the standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances, since "[i]n almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).) "Services will be found reasonable if the [d]epartment has 'identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult.' " (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973.) It is the agency's obligation at the six-month review hearing to make a record that reasonable services were provided. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1478.)

"The adequacy of a reunification plan and of the department's efforts are judged according to the circumstances of each case." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362; accord, *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011.) Relevant circumstances include a parent's willingness to participate in services.

Reunification services are voluntary and the department cannot force an unwilling parent to participate in the case plan. (*Ronell A.*, at p. 1365.) The department is not required to "take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) Therefore, in assessing the reasonableness of reunification services, the juvenile court evaluates not only the department's efforts to assist the parent in accessing the services, but also the parent's efforts to avail himself or herself of those services.

Moreover, "with regard to the sufficiency of reunification services, our sole task on review is to determine whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762 (*Angela S.*).) In doing so, we must review the evidence in a light most favorable to the prevailing party and indulge all reasonable inferences to uphold the court's ruling. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 545.) "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*Ibid*.)

The record in this case, set out above, reveals the services offered were reasonable—they were tailored to fit the circumstances and to eliminate the conditions that led to the juvenile court's jurisdictional finding—and Mother consented to them. The services provided here may not have been perfect but were certainly reasonable under the circumstances.

In her writ, Mother contends that "despite the orders for drug testing and the orders for visitation, the Social Worker, in effect, terminated Mother's reunification services on her own a full two months before the six month review and the court's order." There is nothing in the record to support Mother's claim. To support her claim, Mother provided new facts, which were never presented in the lower court. A writ memorandum "must provide a summary of the significant facts, *limited to matters in the record*." (California Rule of Court, rule 8.452(b)(1), italics added.) In Mother's summary of facts, Mother failed to cite to the record in 14 of the paragraphs because these "facts" are not in the record. Therefore, we cannot consider these facts to determine whether there is substantial evidence to support the lower court's finding. Nonetheless, contrary to Mother's claim, the social worker, in the six-month review report, provided that "mother has not contacted SSP Garcia since November 2018, in order to perform case planning activities or arrange visits. [Mother] has not visited since November 2018; thus not building on or maintaining a bond with her child." Mother's lack of contact with the social worker was not new. In the jurisdiction/disposition report, the social worker noted that Mother "has been difficult to contact." Hence, the record demonstrates that it was Mother who failed to contact and follow up with the social worker regarding her reunification services. Moreover, if Mother felt during the reunification period that the services offered to her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan. She did not. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.)

After reviewing the reporter's transcript and clerk's transcript on appeal, provided in detail *ante*, we conclude that the record contains substantial evidence to support the juvenile court's finding that services provided to Mother were reasonable. The record shows that Mother completed some of the services ordered—parenting and individual parenting. With regard to random drug tests, Mother tested negative six times and failed to test 10 times; non-tests are deemed to be positive tests. Moreover, although Mother was offered visitation, Mother only marginally complied. The primary issue in this dependency case, however, was Mother's drug addiction problem, which Mother failed to overcome. Mother entered three different drug programs and failed to complete each one. According to MGM, off the record, Mother supposedly entered into a fourth program at the time of the six-month review hearing. The record, therefore, shows that CFS provided Mother with numerous referrals to address her substance abuse problem. Mother simply failed to complete the programs and benefit from them. As in *Angela S.*, *supra*, 36 Cal.App.4th at p. 763, Mother's "real problem was not a lack of services available but a lack of initiative to consistently take advantage of the services that were offered."

In sum, the evidence shows that Mother's case plan was tailored to fit her circumstances and that CFS made reasonable efforts to assist her to comply with her case plan. Hence, the services provided, while not perfect in every regard, were reasonable under the circumstances (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547), and the juvenile court's finding that reasonable reunification services were provided is supported by substantial evidence. (See *Angela S.*, *supra*, 36 Cal.App.4th at p. 762.)

DISPOSITION

The writ petition is denied. The stay ordered on May 30, 2019, is DISSOLVED.

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MILLER
Acting P. J.

We concur:

CODRINGTON
J.

FIELDS
J.